Trust Wills

How do I ensure that the assets in our "family trust" end up being shared among my children in a fair and appropriate manner? How do I pass control of my trust to the next generation, or control over specific assets? What are the tax consequences of passing on trust assets now, or when I die?

Trusts are popular business and investment structures. This is for good reason. Properly structured they can accommodate a number of objectives, including asset protection, tax efficiency, commercial flexibility and succession planning.

However, in our experience trusts are poorly handled in the context of succession planning.

The key thing about trusts in the context of succession planning is that you cannot deal with trust assets through your Will. This is because you do not own "trust assets" – they are not within your "personal estate". In fact, this is one of the key reasons why trusts are so effective as a means of asset protection.

It may be possible to pass (or lose) control over an entire trust by means of changing the trustee or appointor through your Will. However, changing the trustee or appointor is only possible if the Trust Deed provides for this, and the provisions in your Will properly invoke the clauses in the Trust Deed. In the relatively rare circumstances when "standard clauses" in a Will attempt to deal with existing trusts, they often miss the mark.

While provisions in your Will may enable you to pass control over an entire trust, this has major limitations. Consider the following issues…

- You cannot pass control over specific assets within the trust. If you have more than one beneficiary, they all participate in the control of all the trust assets. It is not possible for each beneficiary to take their share of the trust assets. The personal circumstances and investment plans of each beneficiary may differ widely. This can be hard to accommodate within the one trust.
- If you appoint more than one trustee or appointor you need to consider whether they need to act unanimously or by a "simple" or "special" majority. This may require amendments to the Trust Deed. If you do not properly address these issues a majority of trustees may gang-up against an individual to exclude them from trust assets.
- It is difficult to accommodate the passing of control of a trust to children who are not yet 18. If you pass control of a trust to a third party until your children are old enough, you should ensure that they are not able to distribute assets and income to themselves, at the expense of your children. Furthermore, you may want trust assets to be given to your children over time, as opposed to all at once.

A **Trust Will** is a strategy that allows you to take control over the manner in which specific trusts assets are dealt with, both during your lifetime, and on your death. A **Trust Will** enables you to:

- Pass ownership or control over one or more specific trust assets to individual beneficiaries;
- Pass assets to beneficiaries all at once, or gradually over a period of time;

- Split the trust into two or more separate sub-trusts, with control of each sub-trust passing to individual beneficiaries, who may then pursue their own investment priorities; or
- Suspend trust powers for a period of time, or in specific circumstances. For example, the power to sell property may be suspended until a child reaches a certain age, or while a third party is administering the trust.

Put simply, a **Trust Will** enables you to put in place a structured succession plan for your trusts.

What next?

If you would like to speak to someone about putting in place a Trust Will, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.